

ASSEMBLY BILL

No. 1564

Introduced by Committee on Insurance (Coto (Chair), Charles Calderon, Carter, Feuer, Hayashi, Nava, and Torres)

March 12, 2009

An act to amend Sections 3201.5, 3201.7, 3351, 3370, 3743, 4054, 4062, 4062.3, 4062.5, 4067, 4621, 4651, 4903, 4903.1, 4905, 4907, 5270.5, 5271, 5402, 5451, 5453, 5500.5, 5501.5, 5502, 5505, 5700, 5708, and 5813 of, to add Section 3206.5 to, to repeal Section 4651.2 of, and to repeal Chapter 11 (commencing with Section 4401) of Part 1 of Division 4 of, the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1564, as introduced, Committee on Insurance. Workers' compensation.

(1) Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, which requires employers to secure the payment of workers' compensation, including medical treatment, for injuries incurred by their employees that arise out of, or in the course of, employment.

Existing law authorizes collective bargaining agreements between a private employer or groups of employers engaged in construction-related activities and a recognized or certified exclusive bargaining representative that establishes, among other things, a vocational rehabilitation or retraining program utilizing an agreed list of providers of rehabilitation services that may be the exclusive source of providers of rehabilitation services.

This bill would delete the provision providing that a collective bargaining agreement may establish a vocational rehabilitation or retraining program and would make conforming changes.

(2) Existing law authorizes labor-management agreements between an employer or groups of employers and a union that is the recognized or certified exclusive bargaining representative regarding various issues that are negotiated separate and apart from any collective bargaining agreement covering affected employees. The labor-management agreements may establish an alternative dispute resolution system, use of an agreed list of providers of medical treatment that may be the exclusive source of all workers' compensation medical treatment, the use of an agreed, limited list of qualified medical evaluators that may be used exclusively for workers' compensation purposes, joint labor management safety committees, a light-duty modified job, or return-to-work program, or a vocation rehabilitation or retraining program that may be used exclusively for workers' compensation purposes.

This bill would delete the provision providing that the labor-management agreement may include a vocation rehabilitation or retraining program and would make conforming changes.

(3) Existing law provides that each inmate of a state penal or correctional institution shall be entitled to workers' compensation benefits for injury arising out of, and in the course of, assigned employment and for the death of the inmate if the injury proximately causes the death, subject to specified conditions. Existing law provides that an employee who is an inmate, as defined, who is eligible for vocational rehabilitation, as defined, shall only be eligible for direct placement services.

This bill would delete the provision limiting eligibility to direct placement services.

(4) Existing workers' compensation law requires the treating physician primarily responsible for managing the care of an injured worker, or a physician designated by the treating physician, to render opinions on all medical issues necessary to determine eligibility for compensation.

This bill would provide that no disputed medical issue, as specified, shall be the subject of declaration of readiness to proceed to a hearing unless there has been an evaluation by the treating physician or agreed or qualified medical evaluator.

(5) Existing law provides that if an employer objects to a report of the treating physician recommending that spinal surgery be performed, an orthopedic surgeon or neurosurgeon shall prepare a second opinion report resolving the disputed surgical recommendation, as specified. Existing law provides that if the second opinion report does not recommend surgery, the employer shall file a declaration of readiness to proceed.

This bill would provide that if the second opinion does not recommend surgery, the employer shall file a declaration of readiness to proceed, unless the employee agrees in writing with the recommendation of the second opinion physician.

(6) Existing law provides that if a qualified medical evaluator selected from a panel of evaluators fails to complete the formal medical evaluation within the timeframes established by the Administrative Director of the Division of Workers' Compensation, a new evaluation may be obtained, upon the request of either party.

This bill would require that a new evaluation may only be obtained if the party requests the new evaluation prior to the receipt of the evaluator's report.

(7) Existing law provides that neither the employee nor the employer shall have any liability for payment for the formal medical evaluation that was not completed within the required timeframes unless the employee or employer, on prescribed forms, each then waives the right to a new evaluation and elects to accept the original evaluation even though it was not completed within the required timeframes.

This bill would, instead, provide that neither the employee nor the employer shall have any liability if either party objects to the report prior to receipt of the report and that if neither objects, each then waives the right to a new evaluation and elects to accept the original evaluation.

(8) Existing law provides that where an asbestos worker, as defined, is injured as a result of asbestosis, as defined, and makes a claim for workers' compensation, if the responsible employer cannot be located or fails to provide workers' compensation within 30 days, the worker may seek the payment of workers' compensation temporary disability and medical benefits from the continuously appropriated Asbestos Workers' Account in the Uninsured Employers Fund in the State Treasury. Existing law provides that once a decision establishing the responsible employer or insurance carrier is agreed upon between the parties, or is issued by the Workers' Compensation Appeals Board, and becomes final, the Asbestos Workers' Account shall terminate payment

of compensation benefits, notify all interested parties accordingly, and seek reimbursement for the benefits the account paid out.

(9) Existing law provides that the above provisions shall be operative only until January 1, 1989, and as of that date all payments from the fund shall be terminated, and the state shall have no further obligation to pay asbestos workers' benefits, unless a later enacted act that is chaptered before January 1, 1989, deletes or extends that date. Existing law provides, however, that if no statute is enacted to delete or extend that date prior to January 1, 1989, the authority of the Asbestos Workers' Account to recover the benefits and costs paid to asbestos workers prior to that date shall continue until the benefits and costs have been recovered.

This bill would delete the above provisions.

(10) Under existing law, the employee, or the dependents of a deceased employee, shall be reimbursed for his or her medical-legal expenses, as defined. Existing law provides that, except as provided, no comprehensive medical-legal evaluations, except those at the request of the employer, shall be performed during the first 60 days after the notice of claim has been filed, and neither the employer nor the employee shall be liable for any expenses incurred for comprehensive medical-legal evaluations performed within the first 60 days after the notice of claim has been filed.

This bill would, instead, provide that neither the employer nor the employee shall be liable for any medical-legal expenses incurred outside of specified provisions.

(11) Existing law requires that a disability indemnity payment made by any written instrument be immediately negotiable and payable in cash on demand. Existing law provides that an employer may deposit the disability indemnity payment in an account in any bank, savings and loan association, or credit union of the employee's choice in California, provided the employee has voluntarily authorized the deposit.

This bill would no longer authorize an employer to deposit the disability indemnity payment in an account in a savings and loan association.

(12) Under the workers' compensation system, the Workers' Compensation Appeals Board has jurisdiction to determine claims by employees who have sustained injuries in the course of his or her employment.

Existing law prohibits petitions filed with the appeals board concerning a continuing temporary disability award from being granted while the injured worker is pursuing a rehabilitation plan.

This bill would delete the above provision.

(13) Existing workers' compensation law authorizes the appeals board to determine and allow specified expenses, including reasonable attorney's fees for legal services, as liens against any sum to be paid as compensation. Existing law prohibits a fee for legal services from being awarded to any representative who is not an attorney, except with respect to those claims for compensation for which an application, as specified, has been filed with the appeals board on or before December 31, 1991, or for which a disclosure form, as specified, has been sent to the employer, or insurer or 3rd-party administrator, if either is known, on or before December 31, 1991.

This bill would, instead, prohibit a fee for legal services from being awarded to any representative who is not an attorney and would no longer provide for an exception.

(14) Existing law prohibits a lien claim for reasonable expenses incurred by or on behalf of the injured employee and medical-legal expenses from being filed after 6 months from the date on which the appeals board or a workers' compensation administrative law judge issues a final decision, findings, order, including an order approving compromise and release, or award, on the merits of the claim, after 5 years from the date of the injury for which the services were provided, or after one year from the date the services were provided, whichever is later.

(15) Existing law provides that where it appears in any proceeding pending before the appeals board that a lien should be allowed if it had been duly requested by the party entitled thereto, the appeals board may, without any request for the lien having been made, order the payment of the claim to be made directly to the person entitled, as specified.

This bill would prohibit the appeals board from ordering the payment of the claim if the party entitled to it did not comply with the 6-month timeframe relating to reasonable expenses incurred by or on behalf of the injured employee and medical-legal expenses.

(16) Existing law requires the workers' compensation judge at each district office to prepare a list of all eligible attorneys who apply to be placed on the list of eligible arbitrators. Existing law prohibits an

attorney from being included in the panel of arbitrators if he or she has served as a judge in any proceeding involving the same case.

This bill would authorize the parties to the case to waive the prohibition of an attorney who had served as a judge in any proceeding involving the same case.

(17) Under existing law, when a workers' compensation dispute is submitted for arbitration, the workers' compensation judge is required to add certain arbitrators to the arbitration panel depending upon the composition of the parties in the case.

This bill would provide that when an applicant or lien claimant is a party to the relevant claim, for each additional party in the capacity of employer, the presiding judge shall assign a retired workers' compensation judge or retired appeals board commissioner and an applicant's attorney to the arbitration panel. The bill would provide that when the dispute involves solely defendants, for each additional party in the capacity of employer beyond 2 employers, the presiding judge shall assign a workers' compensation judge or retired appeals board commissioner and an applicant's attorney.

(18) Existing law specifies locations where a workers' compensation claim may be filed. Under existing law, if the venue site where the application is to be filed is the county where the employee's attorney maintains his or her principal business, the attorney for the employee shall indicate that venue site when forwarding a information request form. Existing law provides the employer with 30 days from receipt of the information request form to object to the selected venue site.

This bill would, instead, provide that if the venue site where the application is to be filed is the county where the employee's attorney maintains his or her principal business, the employer shall have 30 days from receipt of the conforming application, as defined, to file and serve an objection to the selected venue site.

(19) Existing law requires all oral testimony, objections, and rulings at all hearings and investigations before the appeals board or a workers' compensation judge to be taken down in shorthand by a competent phonographic reporter.

This bill would, instead, require all oral testimony, objections, and rulings to be recorded on a permanent accessible record by a competent hearing reporter.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3201.5 of the Labor Code is amended to
2 read:

3 3201.5. (a) Except as provided in subdivisions (b) and (c), the
4 Department of Industrial Relations and the courts of this state shall
5 recognize as valid and binding any provision in a collective
6 bargaining agreement between a private employer or groups of
7 employers engaged in construction, construction maintenance, or
8 activities limited to rock, sand, gravel, cement and asphalt
9 operations, heavy-duty mechanics, surveying, and construction
10 inspection and a union that is the recognized or certified exclusive
11 bargaining representative that establishes any of the following:

12 (1) An alternative dispute resolution system governing disputes
13 between employees and employers or their insurers that
14 supplements or replaces all or part of those dispute resolution
15 processes contained in this division, including, but not limited to,
16 mediation and arbitration. Any system of arbitration shall provide
17 that the decision of the arbiter or board of arbitration is subject to
18 review by the appeals board in the same manner as provided for
19 reconsideration of a final order, decision, or award made and filed
20 by a workers' compensation administrative law judge pursuant to
21 the procedures set forth in Article 1 (commencing with Section
22 5900) of Chapter 7 of Part 4 of Division 4, and the court of appeals
23 pursuant to the procedures set forth in Article 2 (commencing with
24 Section 5950) of Chapter 7 of Part 4 of Division 4, governing
25 orders, decisions, or awards of the appeals board. The findings of
26 fact, award, order, or decision of the arbitrator shall have the same
27 force and effect as an award, order, or decision of a workers'
28 compensation administrative law judge. Any provision for
29 arbitration established pursuant to this section shall not be subject
30 to Sections 5270, 5270.5, 5271, 5272, 5273, 5275, and 5277.

31 (2) The use of an agreed list of providers of medical treatment
32 that may be the exclusive source of all medical treatment provided
33 under this division.

34 (3) The use of an agreed, limited list of qualified medical
35 evaluators and agreed medical evaluators that may be the exclusive
36 source of qualified medical evaluators and agreed medical
37 evaluators under this division.

38 (4) Joint labor management safety committees.

1 (5) A light-duty, modified job or return-to-work program.

2 ~~(6) A vocational rehabilitation or retraining program utilizing~~
3 ~~an agreed list of providers of rehabilitation services that may be~~
4 ~~the exclusive source of providers of rehabilitation services under~~
5 ~~this division.~~

6 (b) (1) Nothing in this section shall allow a collective bargaining
7 agreement that diminishes the entitlement of an employee to
8 compensation payments for total or partial disability, temporary
9 disability, ~~vocational rehabilitation~~, or medical treatment fully paid
10 by the employer as otherwise provided in this division. The portion
11 of any agreement that violates this paragraph shall be declared null
12 and void.

13 (2) The parties may negotiate any aspect of the delivery of
14 medical benefits and the delivery of disability compensation to
15 employees of the employer or group of employers that are eligible
16 for group health benefits and nonoccupational disability benefits
17 through their employer.

18 (c) Subdivision (a) shall apply only to the following:

19 (1) An employer developing or projecting an annual workers'
20 compensation insurance premium, in California, of two hundred
21 fifty thousand dollars (\$250,000) or more, or any employer that
22 paid an annual workers' compensation insurance premium, in
23 California, of two hundred fifty thousand dollars (\$250,000) in at
24 least one of the previous three years.

25 (2) Groups of employers engaged in a workers' compensation
26 safety group complying with Sections 11656.6 and 11656.7 of the
27 Insurance Code, and established pursuant to a joint labor
28 management safety committee or committees, that develops or
29 projects annual workers' compensation insurance premiums of
30 two million dollars (\$2,000,000) or more.

31 (3) Employers or groups of employers that are self-insured in
32 compliance with Section 3700 that would have projected annual
33 workers' compensation costs that meet the requirements of, and
34 that meet the other requirements of, paragraph (1) in the case of
35 employers, or paragraph (2) in the case of groups of employers.

36 (4) Employers covered by an owner or general contractor
37 provided wrap-up insurance policy applicable to a single
38 construction site that develops workers' compensation insurance
39 premiums of two million dollars (\$2,000,000) or more with respect
40 to those employees covered by that wrap-up insurance policy.

1 (d) Employers and labor representatives who meet the eligibility
2 requirements of this section shall be issued a letter by the
3 administrative director advising each employer and labor
4 representative that, based upon the review of all documents and
5 materials submitted as required by the administrative director, each
6 has met the eligibility requirements of this section.

7 (e) The premium rate for a policy of insurance issued pursuant
8 to this section shall not be subject to the requirements of Section
9 11732 or 11732.5 of the Insurance Code.

10 (f) No employer may establish or continue a program established
11 under this section until it has provided the administrative director
12 with all of the following:

13 (1) Upon its original application and whenever it is renegotiated
14 thereafter, a copy of the collective bargaining agreement and the
15 approximate number of employees who will be covered thereby.

16 (2) Upon its original application and annually thereafter, a valid
17 and active license where that license is required by law as a
18 condition of doing business in the state within the industries set
19 forth in subdivision (a) of Section 3201.5.

20 (3) Upon its original application and annually thereafter, a
21 statement signed under penalty of perjury, that no action has been
22 taken by any administrative agency or court of the United States
23 to invalidate the collective bargaining agreement.

24 (4) The name, address, and telephone number of the contact
25 person of the employer.

26 (5) Any other information that the administrative director deems
27 necessary to further the purposes of this section.

28 (g) No collective bargaining representative may establish or
29 continue to participate in a program established under this section
30 unless all of the following requirements are met:

31 (1) Upon its original application and annually thereafter, it has
32 provided to the administrative director a copy of its most recent
33 LM-2 or LM-3 filing with the United States Department of Labor,
34 along with a statement, signed under penalty of perjury, that the
35 document is a true and correct copy.

36 (2) It has provided to the administrative director the name,
37 address, and telephone number of the contact person or persons
38 of the collective bargaining representative or representatives.

39 (h) Commencing July 1, 1995, and annually thereafter, the
40 Division of Workers' Compensation shall report to the Director

1 of the Department of Industrial Relations the number of collective
2 bargaining agreements received and the number of employees
3 covered by these agreements.

4 (i) By June 30, 1996, and annually thereafter, the Administrative
5 Director of the Division of Workers' Compensation shall prepare
6 and notify Members of the Legislature that a report authorized by
7 this section is available upon request. The report based upon
8 aggregate data shall include the following:

9 (1) Person hours and payroll covered by agreements filed.

10 (2) The number of claims filed.

11 (3) The average cost per claim shall be reported by cost
12 components whenever practicable.

13 (4) The number of litigated claims, including the number of
14 claims submitted to mediation, the appeals board, or the court of
15 appeal.

16 (5) The number of contested claims resolved prior to arbitration.

17 (6) The projected incurred costs and actual costs of claims.

18 (7) Safety history.

19 ~~(8) The number of workers participating in vocational~~
20 ~~rehabilitation.~~

21 ~~(9)~~

22 (8) The number of workers participating in light-duty programs.

23 The division shall have the authority to require those employers
24 and groups of employers listed in subdivision (c) to provide the
25 data listed above.

26 (j) The data obtained by the administrative director pursuant to
27 this section shall be confidential and not subject to public disclosure
28 under any law of this state. However, the Division of Workers'
29 Compensation shall create derivative works pursuant to
30 subdivisions (h) and (i) based on the collective bargaining
31 agreements and data. Those derivative works shall not be
32 confidential, but shall be public. On a monthly basis the
33 administrative director shall make available an updated list of
34 employers and unions entering into collective bargaining
35 agreements containing provisions authorized by this section.

36 SEC. 2. Section 3201.7 of the Labor Code is amended to read:

37 3201.7. (a) Except as provided in subdivision (b), the
38 Department of Industrial Relations and the courts of this state shall
39 recognize as valid and binding any labor-management agreement
40 that meets all of the following requirements:

1 (1) The labor-management agreement has been negotiated
2 separate and apart from any collective bargaining agreement
3 covering affected employees.

4 (2) The labor-management agreement is restricted to the
5 establishment of the terms and conditions necessary to implement
6 this section.

7 (3) The labor-management agreement has been negotiated in
8 accordance with the authorization of the administrative director
9 pursuant to subdivision (d), between an employer or groups of
10 employers and a union that is the recognized or certified exclusive
11 bargaining representative that establishes any of the following:

12 (A) An alternative dispute resolution system governing disputes
13 between employees and employers or their insurers that
14 supplements or replaces all or part of those dispute resolution
15 processes contained in this division, including, but not limited to,
16 mediation and arbitration. Any system of arbitration shall provide
17 that the decision of the arbiter or board of arbitration is subject to
18 review by the appeals board in the same manner as provided for
19 reconsideration of a final order, decision, or award made and filed
20 by a workers' compensation administrative law judge pursuant to
21 the procedures set forth in Article 1 (commencing with Section
22 5900) of Chapter 7 of Part 4 of Division 4, and the court of appeals
23 pursuant to the procedures set forth in Article 2 (commencing with
24 Section 5950) of Chapter 7 of Part 4 of Division 4, governing
25 orders, decisions, or awards of the appeals board. The findings of
26 fact, award, order, or decision of the arbitrator shall have the same
27 force and effect as an award, order, or decision of a workers'
28 compensation administrative law judge. Any provision for
29 arbitration established pursuant to this section shall not be subject
30 to Sections 5270, 5270.5, 5271, 5272, 5273, 5275, and 5277.

31 (B) The use of an agreed list of providers of medical treatment
32 that may be the exclusive source of all medical treatment provided
33 under this division.

34 (C) The use of an agreed, limited list of qualified medical
35 evaluators and agreed medical evaluators that may be the exclusive
36 source of qualified medical evaluators and agreed medical
37 evaluators under this division.

38 (D) Joint labor management safety committees.

39 (E) A light-duty, modified job, or return-to-work program.

1 ~~(F) A vocational rehabilitation or retraining program utilizing~~
2 ~~an agreed list of providers of rehabilitation services that may be~~
3 ~~the exclusive source of providers of rehabilitation services under~~
4 ~~this division.~~

5 (b) (1) Nothing in this section shall allow a labor-management
6 agreement that diminishes the entitlement of an employee to
7 compensation payments for total or partial disability, temporary
8 disability, ~~vocational rehabilitation~~, or medical treatment fully paid
9 by the employer as otherwise provided in this division; nor shall
10 any agreement authorized by this section deny to any employee
11 the right to representation by counsel at all stages during the
12 alternative dispute resolution process. The portion of any agreement
13 that violates this paragraph shall be declared null and void.

14 (2) The parties may negotiate any aspect of the delivery of
15 medical benefits and the delivery of disability compensation to
16 employees of the employer or group of employers that are eligible
17 for group health benefits and nonoccupational disability benefits
18 through their employer.

19 (c) Subdivision (a) shall apply only to the following:

20 (1) An employer developing or projecting an annual workers'
21 compensation insurance premium, in California, of fifty thousand
22 dollars (\$50,000) or more, and employing at least 50 employees,
23 or any employer that paid an annual workers' compensation
24 insurance premium, in California, of fifty thousand dollars
25 (\$50,000), and employing at least 50 employees in at least one of
26 the previous three years.

27 (2) Groups of employers engaged in a workers' compensation
28 safety group complying with Sections 11656.6 and 11656.7 of the
29 Insurance Code, and established pursuant to a joint labor
30 management safety committee or committees, that develops or
31 projects annual workers' compensation insurance premiums of
32 five hundred thousand dollars (\$500,000) or more.

33 (3) Employers or groups of employers, including cities and
34 counties, that are self-insured in compliance with Section 3700
35 that would have projected annual workers' compensation costs
36 that meet the requirements of, and that meet the other requirements
37 of, paragraph (1) in the case of employers, or paragraph (2) in the
38 case of groups of employers.

39 (d) Any recognized or certified exclusive bargaining
40 representative in an industry not covered by Section 3201.5, may

1 file a petition with the administrative director seeking permission
2 to negotiate with an employer or group of employers to enter into
3 a labor-management agreement pursuant to this section. The
4 petition shall specify the bargaining unit or units to be included,
5 the names of the employers or groups of employers, and shall be
6 accompanied by proof of the labor union's status as the exclusive
7 bargaining representative. The current collective bargaining
8 agreement or agreements shall be attached to the petition. The
9 petition shall be in the form designated by the administrative
10 director. Upon receipt of the petition, the administrative director
11 shall promptly verify the petitioner's status as the exclusive
12 bargaining representative. If the petition satisfies the requirements
13 set forth in this subdivision, the administrative director shall issue
14 a letter advising each employer and labor representative of their
15 eligibility to enter into negotiations, for a period not to exceed one
16 year, for the purpose of reaching agreement on a labor-management
17 agreement pursuant to this section. The parties may jointly request,
18 and shall be granted, by the administrative director, an additional
19 one-year period to negotiate an agreement.

20 (e) No employer may establish or continue a program established
21 under this section until it has provided the administrative director
22 with all of the following:

23 (1) Upon its original application and whenever it is renegotiated
24 thereafter, a copy of the labor-management agreement and the
25 approximate number of employees who will be covered thereby.

26 (2) Upon its original application and annually thereafter, a
27 statement signed under penalty of perjury, that no action has been
28 taken by any administrative agency or court of the United States
29 to invalidate the labor-management agreement.

30 (3) The name, address, and telephone number of the contact
31 person of the employer.

32 (4) Any other information that the administrative director deems
33 necessary to further the purposes of this section.

34 (f) No collective bargaining representative may establish or
35 continue to participate in a program established under this section
36 unless all of the following requirements are met:

37 (1) Upon its original application and annually thereafter, it has
38 provided to the administrative director a copy of its most recent
39 LM-2 or LM-3 filing with the United States Department of Labor,
40 where such filing is required by law, along with a statement, signed

1 under penalty of perjury, that the document is a true and correct
2 copy.

3 (2) It has provided to the administrative director the name,
4 address, and telephone number of the contact person or persons
5 of the collective bargaining representative or representatives.

6 (g) Commencing July 1, 2005, and annually thereafter, the
7 Division of Workers' Compensation shall report to the Director
8 of Industrial Relations the number of labor-management
9 agreements received and the number of employees covered by
10 these agreements.

11 (h) By June 30, 2006, and annually thereafter, the administrative
12 director shall prepare and notify Members of the Legislature that
13 a report authorized by this section is available upon request. The
14 report based upon aggregate data shall include the following:

15 (1) Person hours and payroll covered by agreements filed.

16 (2) The number of claims filed.

17 (3) The average cost per claim shall be reported by cost
18 components whenever practicable.

19 (4) The number of litigated claims, including the number of
20 claims submitted to mediation, the appeals board, or the court of
21 appeal.

22 (5) The number of contested claims resolved prior to arbitration.

23 (6) The projected incurred costs and actual costs of claims.

24 (7) Safety history.

25 ~~(8) The number of workers participating in vocational~~
26 ~~rehabilitation.~~

27 ~~(9)~~

28 (8) The number of workers participating in light-duty programs.

29 ~~(10)~~

30 (9) Overall worker satisfaction.

31 The division shall have the authority to require employers and
32 groups of employers participating in labor-management agreements
33 pursuant to this section to provide the data listed above.

34 (i) The data obtained by the administrative director pursuant to
35 this section shall be confidential and not subject to public disclosure
36 under any law of this state. However, the Division of Workers'
37 Compensation shall create derivative works pursuant to
38 subdivisions (f) and (g) based on the labor-management agreements
39 and data. Those derivative works shall not be confidential, but
40 shall be public. On a monthly basis, the administrative director

1 shall make available an updated list of employers and unions
2 entering into labor-management agreements authorized by this
3 section.

4 SEC. 3. Section 3206.5 is added to the Labor Code, to read:

5 3206.5. "Court administrator" means the administrator of the
6 workers' compensation adjudication process at the trial level.

7 SEC. 4. Section 3351 of the Labor Code is amended to read:

8 3351. "Employee" means every person in the service of an
9 employer under any appointment or contract of hire or
10 apprenticeship, express or implied, oral or written, whether lawfully
11 or unlawfully employed, and includes:

12 (a) Aliens and minors.

13 (b) All elected and appointed paid public officers.

14 (c) All officers and members of boards of directors of
15 quasi-public or private corporations while rendering actual service
16 for the corporations for pay; provided that, where the officers and
17 directors of the private corporation are the sole shareholders
18 thereof, the corporation and the officers and directors shall come
19 under the compensation provisions of this division only by election
20 as provided in subdivision (a) of Section 4151.

21 (d) Except as provided in subdivision (h) of Section 3352, any
22 person employed by the owner or occupant of a residential dwelling
23 whose duties are incidental to the ownership, maintenance, or use
24 of the dwelling, including the care and supervision of children, or
25 whose duties are personal and not in the course of the trade,
26 business, profession, or occupation of the owner or occupant.

27 (e) All persons incarcerated in a state penal or correctional
28 institution while engaged in assigned work or employment as
29 defined in paragraph (1) of subdivision (a) of Section ~~10024~~
30 *10133.4* of Title 8 of the California Code of Regulations, or
31 engaged in work performed under contract.

32 (f) All working members of a partnership or limited liability
33 company receiving wages irrespective of profits from the
34 partnership or limited liability company; provided that where the
35 working members of the partnership or limited liability company
36 are general partners or managers, the partnership or limited liability
37 company and the partners or managers shall come under the
38 compensation provisions of this division only by election as
39 provided in subdivision (a) of Section 4151. If a private corporation
40 is a general partner or manager, "working members of a partnership

1 or limited liability company” shall include the corporation and the
2 officers and directors of the corporation, provided that the officers
3 and directors are the sole shareholders of the corporation. If a
4 limited liability company is a partner or member, “working
5 members of the partnership or limited liability company” shall
6 include the managers of the limited liability company.

7 (g) For the purposes of subdivisions (c) and (f), the persons
8 holding the power to revoke a trust as to shares of a private
9 corporation or as to general partnership or limited liability company
10 interests held in the trust, shall be deemed to be the shareholders
11 of the private corporation, or the general partners of the partnership,
12 or the managers of the limited liability company.

13 SEC. 5. Section 3370 of the Labor Code is amended to read:

14 3370. (a) Each inmate of a state penal or correctional institution
15 shall be entitled to the workers’ compensation benefits provided
16 by this division for injury arising out of and in the course of
17 assigned employment and for the death of the inmate if the injury
18 proximately causes death, subject to all of the following conditions:

19 (1) The inmate was not injured as the result of an assault in
20 which the inmate was the initial aggressor, or as the result of the
21 intentional act of the inmate injuring himself or herself.

22 (2) The inmate shall not be entitled to any temporary disability
23 indemnity benefits while incarcerated in a state prison.

24 (3) No benefits shall be paid to an inmate while he or she is
25 incarcerated. The period of benefit payment shall instead
26 commence upon release from incarceration. If an inmate who has
27 been released from incarceration, and has been receiving benefits
28 under this section, is reincarcerated in a city or county jail, or state
29 penal or correctional institution, the benefits shall cease
30 immediately upon the inmate’s reincarceration and shall not be
31 paid for the duration of the reincarceration.

32 (4) This section shall not be construed to provide for the
33 payment to an inmate, upon release from incarceration, of
34 temporary disability benefits ~~which~~ *that* were not paid due to the
35 prohibition of paragraph (2).

36 (5) In determining temporary and permanent disability indemnity
37 benefits for the inmate, the average weekly earnings shall be taken
38 at not more than the minimum amount set forth in Section 4453.

39 (6) Where a dispute exists respecting an inmate’s rights to the
40 workers’ compensation benefits provided herein, the inmate may

1 file an application with the appeals board to resolve the dispute.
2 The application may be filed at any time during the inmate's
3 incarceration.

4 (7) After release or discharge from a correctional institution,
5 the former inmate shall have one year in which to file an original
6 application with the appeals board, unless the time of injury is
7 such that it would allow more time under Section 5804 of the Labor
8 Code.

9 (8) The percentage of disability to total disability shall be
10 determined as for the occupation of a laborer of like age by
11 applying the schedule for the determination of the percentages of
12 permanent disabilities prepared and adopted by the administrative
13 director.

14 (9) This division shall be the exclusive remedy against the state
15 for injuries occurring while engaged in assigned work or work
16 under contract. Nothing in this division shall affect any right or
17 remedy of an injured inmate for injuries not compensated by this
18 division.

19 (b) The Department of Corrections shall present to each inmate
20 of a state penal or correctional institution, prior to his or her first
21 assignment to work at the institution, a printed statement of his or
22 her rights under this division, and a description of procedures to
23 be followed in filing for benefits under this section. The statement
24 shall be approved by the administrative director and be posted in
25 a conspicuous place at each place where an inmate works.

26 (c) Notwithstanding any other provision of this division, the
27 Department of Corrections shall have medical control over
28 treatment provided an injured inmate while incarcerated in a state
29 prison, except, that in serious cases, the inmate is entitled, upon
30 request, to the services of a consulting physician.

31 (d) Paragraphs (2), (3), and (4) of subdivision (a) shall also be
32 applicable to an inmate of a state penal or correctional institution
33 who would otherwise be entitled to receive workers' compensation
34 benefits based on an injury sustained prior to his or her
35 incarceration. However, temporary and permanent disability
36 benefits which, except for this subdivision, would otherwise be
37 payable to an inmate during incarceration based on an injury
38 sustained prior to incarceration shall be paid to the dependents of
39 the inmate. If the inmate has no dependents, the temporary
40 disability benefits which, except for this subdivision, would

1 otherwise be payable during the inmate's incarceration shall be
2 paid to the State Treasury to the credit of the Uninsured Employers
3 Fund, and the permanent disability benefits—~~which~~ *that* would
4 otherwise be payable during the inmate's incarceration shall be
5 held in trust for the inmate by the Department of Corrections during
6 the period of incarceration.

7 For purposes of this subdivision, "dependents" means the
8 inmate's spouse or children, including an inmate's former spouse
9 due to divorce and the inmate's children from that marriage.

10 ~~(e) Notwithstanding any other provision of this division, an~~
11 ~~employee who is an inmate, as defined in subdivision (e) of Section~~
12 ~~3351 who is eligible for vocational rehabilitation services as~~
13 ~~defined in Section 4635 shall only be eligible for direct placement~~
14 ~~services.~~

15 SEC. 6. Section 3743 of the Labor Code is amended to read:

16 3743. (a) Upon order of the director pursuant to Section
17 3701.5, the fund shall assume the workers' compensation
18 obligations of an insolvent self-insurer.

19 (b) Notwithstanding subdivision (a), the fund shall not be liable
20 for the payment of any penalties assessed for any act or omission
21 on the part of any person other than the fund, including, but not
22 limited to, the penalties provided in Section 132a, 3706, 4553,
23 4554, 4556, 4557, 4558, ~~4601.5~~, 5814, or 5814.1.

24 (c) The fund shall be a party in interest in all proceedings
25 involving compensation claims against an insolvent self-insurer
26 whose compensation obligations have been paid or assumed by
27 the fund. The fund shall have the same rights and defenses as the
28 insolvent self-insurer, including, but not limited to, all of the
29 following:

30 (1) To appear, defend, and appeal claims.

31 (2) To receive notice of, investigate, adjust, compromise, settle,
32 and pay claims.

33 (3) To investigate, handle, and deny claims.

34 SEC. 7. Section 4054 of the Labor Code is amended to read:

35 4054. If the employee fails or refuses to submit to examination
36 after direction by the appeals board, or a ~~referee~~ *workers'*
37 *compensation judge* thereof, or in any way obstructs the
38 examination, his *or her* right to the disability payments—~~which~~ *that*
39 accrue during the period of ~~such~~ *the* failure, refusal, or obstruction,
40 shall be barred.

1 SEC. 8. Section 4062 of the Labor Code is amended to read:

2 4062. (a) If either the employee or employer objects to a
3 medical determination made by the treating physician concerning
4 any medical issues not covered by Section 4060 or 4061 and not
5 subject to Section 4610, the objecting party shall notify the other
6 party in writing of the objection within 20 days of receipt of the
7 report if the employee is represented by an attorney or within 30
8 days of receipt of the report if the employee is not represented by
9 an attorney. Employer objections to the treating physician's
10 recommendation for spinal surgery shall be subject to subdivision
11 (b), and after denial of the physician's recommendation, in
12 accordance with Section 4610. If the employee objects to a decision
13 made pursuant to Section 4610 to modify, delay, or deny a
14 treatment recommendation, the employee shall notify the employer
15 of the objection in writing within 20 days of receipt of that
16 decision. These time limits may be extended for good cause or by
17 mutual agreement. If the employee is represented by an attorney,
18 a medical evaluation to determine the disputed medical issue shall
19 be obtained as provided in Section 4062.2, and no other medical
20 evaluation shall be obtained. If the employee is not represented
21 by an attorney, the employer shall immediately provide the
22 employee with a form prescribed by the medical director with
23 which to request assignment of a panel of three qualified medical
24 evaluators, the evaluation shall be obtained as provided in Section
25 4062.1, and no other medical evaluation shall be obtained.

26 (b) The employer may object to a report of the treating physician
27 recommending that spinal surgery be performed within 10 days
28 of the receipt of the report. If the employee is represented by an
29 attorney, the parties shall seek agreement with the other party on
30 a California licensed board-certified or board-eligible orthopedic
31 surgeon or neurosurgeon to prepare a second opinion report
32 resolving the disputed surgical recommendation. If no agreement
33 is reached within 10 days, or if the employee is not represented
34 by an attorney, an orthopedic surgeon or neurosurgeon shall be
35 randomly selected by the administrative director to prepare a
36 second opinion report resolving the disputed surgical
37 recommendation. Examinations shall be scheduled on an expedited
38 basis. The second opinion report shall be served on the parties
39 within 45 days of receipt of the treating physician's report. If the
40 second opinion report recommends surgery, the employer shall

1 authorize the surgery. If the second opinion report does not
2 recommend surgery, the employer shall file a declaration of
3 readiness to proceed, *unless the employee agrees in writing with*
4 *the recommendation of the second opinion physician.* The employer
5 shall not be liable for medical treatment costs for the disputed
6 surgical procedure, whether through a lien filed with the appeals
7 board or as a self-procured medical expense, or for periods of
8 temporary disability resulting from the surgery, if the disputed
9 surgical procedure is performed prior to the completion of the
10 second opinion process required by this subdivision.

11 (c) The second opinion physician shall not have any material
12 professional, familial, or financial affiliation, as determined by the
13 administrative director, with any of the following:

14 (1) The employer, his or her workers' compensation insurer,
15 third-party claims administrator, or other entity contracted to
16 provide utilization review services pursuant to Section 4610.

17 (2) Any officer, director, or employee of the employer's health
18 care provider, workers' compensation insurer, or third-party claims
19 administrator.

20 (3) A physician, the physician's medical group, or the
21 independent practice association involved in the health care service
22 in dispute.

23 (4) The facility or institution at which either the proposed health
24 care service, or the alternative service, if any, recommended by
25 the employer's health care provider, workers' compensation
26 insurer, or third-party claims administrator, would be provided.

27 (5) The development or manufacture of the principal drug,
28 device, procedure, or other therapy proposed by the employee or
29 his or her treating physician whose treatment is under review, or
30 the alternative therapy, if any, recommended by the employer or
31 other entity.

32 (6) The employee or the employee's immediate family.

33 (d) *A disputed medical issue specified in subdivision (a) shall*
34 *not be the subject of declaration of readiness to process unless*
35 *there has been an evaluation by the treating physician or an agreed*
36 *or qualified medical evaluator.*

37 SEC. 9. Section 4062.3 of the Labor Code is amended to read:

38 4062.3. (a) Any party may provide to the qualified medical
39 evaluator selected from a panel any of the following information:

1 (1) Records prepared or maintained by the employee's treating
2 physician or physicians.

3 (2) Medical and nonmedical records relevant to determination
4 of the medical issue.

5 (b) Information that a party proposes to provide to the qualified
6 medical evaluator selected from a panel shall be served on the
7 opposing party 20 days before the information is provided to the
8 evaluator. If the opposing party objects to consideration of
9 nonmedical records within 10 days thereafter, the records shall
10 not be provided to the evaluator. Either party may use discovery
11 to establish the accuracy or authenticity of nonmedical records
12 prior to the evaluation.

13 (c) If an agreed medical evaluator is selected, as part of their
14 agreement on an evaluator, the parties shall agree on what
15 information is to be provided to the agreed medical evaluator.

16 (d) In any formal medical evaluation, the agreed or qualified
17 medical evaluator shall identify the following:

18 (1) All information received from the parties.

19 (2) All information reviewed in preparation of the report.

20 (3) All information relied upon in the formulation of his or her
21 opinion.

22 (e) All communications with an agreed medical evaluator or a
23 qualified medical evaluator selected from a panel before a medical
24 evaluation shall be in writing and shall be served on the opposing
25 party 20 days in advance of the evaluation. Any subsequent
26 communication with the medical evaluator shall be in writing and
27 shall be served on the opposing party when sent to the medical
28 evaluator.

29 (f) Ex parte communication with an agreed medical evaluator
30 or a qualified medical evaluator selected from a panel is prohibited.
31 If a party communicates with the agreed medical evaluator or the
32 qualified medical evaluator in violation of subdivision (e), the
33 aggrieved party may elect to terminate the medical evaluation and
34 seek a new evaluation from another qualified medical evaluator
35 to be selected according to Section 4062.1 or 4062.2, as applicable,
36 or proceed with the initial evaluation.

37 (g) The party making the communication prohibited by this
38 section shall be subject to being charged with contempt before the
39 appeals board and shall be liable for the costs incurred by the
40 aggrieved party as a result of the prohibited communication,

1 including the cost of the medical evaluation, additional discovery
2 costs, and attorney's fees for related discovery.

3 (h) Subdivisions (e) and (f) shall not apply to oral or written
4 communications by the employee or, if the employee is deceased,
5 the employee's dependent, in the course of the examination or at
6 the request of the evaluator in connection with the examination.

7 (i) Upon completing a determination of the disputed medical
8 issue, the medical evaluator shall summarize the medical findings
9 on a form prescribed by the administrative director and shall serve
10 the formal medical evaluation and the summary form on the
11 employee and the employer. The medical evaluation shall address
12 all contested medical issues arising from all injuries reported on
13 one or more claim forms prior to the date of the employee's initial
14 appointment with the medical evaluator.

15 (j) If, after a medical evaluation is prepared, the employer or
16 the employee subsequently objects to any new medical issue, the
17 parties, to the extent possible, shall utilize the same medical
18 evaluator who prepared the previous evaluation to resolve the
19 medical dispute.

20 ~~(k) No disputed medical issue specified in subdivision (a) may~~
21 ~~be the subject of declaration of readiness to proceed unless there~~
22 ~~has first been an evaluation by the treating physician or an agreed~~
23 ~~or qualified medical evaluator.~~

24 SEC. 10. Section 4062.5 of the Labor Code is amended to read:
25 4062.5. If a qualified medical evaluator selected from a panel
26 fails to complete the formal medical evaluation within the
27 timeframes established by the administrative director pursuant to
28 paragraph (1) of subdivision (j) of Section 139.2, a new evaluation
29 may be obtained, *if requested prior to receipt of the report by*
30 *either party*, upon the request of either party, as provided in
31 Sections 4062.1 or 4062.2. Neither the employee nor the employer
32 shall have any liability for payment for the formal medical
33 evaluation ~~which that~~ was not completed within the required
34 timeframes ~~unless the employee or employer, on forms prescribed~~
35 ~~by the administrative director, each waive if either party objects~~
36 ~~to the report prior to receipt. If neither party objects to the report~~
37 ~~prior to receipt, each party waives the right to a new evaluation~~
38 ~~and elects to accept the original evaluation even though it was not~~
39 ~~completed within the required timeframes.~~

40 SEC. 11. Section 4067 of the Labor Code is amended to read:

1 4067. If the jurisdiction of the appeals board is invoked
2 pursuant to Section 5803 upon the grounds that the effects of the
3 injury have recurred, increased, diminished, or terminated, a formal
4 medical evaluation shall be obtained pursuant to this article.

5 When an agreed medical evaluator or a qualified medical
6 evaluator selected by an ~~unrepresented~~ employee from a
7 three-member panel has previously made a formal medical
8 evaluation of the same or similar issues, the subsequent or
9 additional formal medical evaluation shall be conducted by the
10 same agreed medical evaluator or qualified medical evaluator,
11 unless the workers' compensation judge has made a finding that
12 he or she did not rely on the prior evaluator's formal medical
13 evaluation, any party contested the original medical evaluation by
14 filing an application for adjudication, the ~~unrepresented~~ employee
15 hired an attorney and selected a qualified medical evaluator to
16 conduct another evaluation pursuant to subdivision (b) of Section
17 4064, or the prior evaluator is no longer qualified or readily
18 available to prepare a formal medical evaluation, in which case
19 Sections 4061 or 4062, as the case may be, shall apply as if there
20 had been no prior formal medical evaluation.

21 SEC. 12. Chapter 11 (commencing with Section 4401) of Part
22 1 of Division 4 of the Labor Code is repealed.

23 SEC. 13. Section 4621 of the Labor Code is amended to read:

24 4621. (a) In accordance with the rules of practice and
25 procedure of the appeals board, the employee, or the dependents
26 of a deceased employee, shall be reimbursed for his or her
27 medical-legal expenses and reasonably, actually, and necessarily
28 incurred, except as provided in Section 4064. The reasonableness
29 of, and necessity for, incurring these expenses shall be determined
30 with respect to the time when the expenses were actually incurred.
31 Costs for medical evaluations, diagnostic tests, and interpreters'
32 services incidental to the production of a medical report shall not
33 be incurred earlier than the date of receipt by the employer, the
34 employer's insurance carrier, or, if represented, the attorney of
35 record, of all reports and documents required by the administrative
36 director incidental to the services. This subdivision is not applicable
37 unless there has been compliance with Section 4620.

38 (b) Except as provided in subdivision (c) and Sections 4060,
39 4061 ~~and 4062, no comprehensive medical-legal evaluations,~~
40 ~~except those at the request of an employer, shall be performed~~

1 ~~during the first 60 days after the notice of claim has been filed~~
2 ~~pursuant to Section 5401, and neither the employer nor the~~
3 ~~employee shall be liable for any expenses incurred for~~
4 ~~comprehensive medical-legal evaluations performed within the~~
5 ~~first 60 days after the notice of claim has been filed pursuant to~~
6 ~~Section 5401, 4061.5, 4062, 4062.1, and 4062.2, neither the~~
7 ~~employer nor the employee shall be liable for any medical-legal~~
8 ~~expenses incurred outside of these provisions.~~

9 (c) Comprehensive medical-legal evaluations may be performed
10 at any time after the claim form has been filed pursuant to Section
11 5401 if the employer has rejected the claim.

12 (d) Where, at the request of the employer, the employer's
13 insurance carrier, the administrative director, the appeals board,
14 or a ~~referee~~ *workers' compensation judge*, the employee submits
15 to examination by a physician, he or she shall be entitled to receive,
16 in addition to all other benefits herein provided, all reasonable
17 expenses of transportation, meals, and lodging incident to reporting
18 for the examination to the same extent and manner as provided for
19 in Section 4600.

20 SEC. 14. Section 4651 of the Labor Code is amended to read:

21 4651. (a) No disability indemnity payment shall be made by
22 any written instrument unless it is immediately negotiable and
23 payable in cash, on demand, without discount at some established
24 place of business in the state.

25 Nothing in this section shall prohibit an employer from
26 depositing the disability indemnity payment in an account in any
27 ~~bank, savings and loan association~~ *bank* or credit union of the
28 employee's choice in this state, provided the employee has
29 voluntarily authorized the deposit, nor shall it prohibit an employer
30 from electronically depositing the disability indemnity payment
31 in an account in any ~~bank, savings and loan association,~~ *bank* or
32 credit union, that the employee has previously authorized to receive
33 electronic deposits of payroll, unless the employee has requested,
34 in writing, that disability indemnity benefits not be electronically
35 deposited in the account.

36 (b) It is not a violation of this section if a delay in the negotiation
37 of a written instrument is caused solely by the application of state
38 or federal banking laws or regulations.

39 (c) On or before July 1, 2004, the administrative director shall
40 present to the Governor recommendations on how to provide better

1 access to funds paid to injured workers in light of the requirements
2 of federal and state laws and regulations governing the negotiability
3 of disability indemnity payments. The administrative director shall
4 make specific recommendations regarding payments to migratory
5 and seasonal farmworkers. The Commission on Health and Safety
6 and Workers' Compensation and the Employment Development
7 Department shall assist the administrative director in the
8 completion of this report.

9 SEC. 15. Section 4651.2 of the Labor Code is repealed.

10 ~~4651.2. No petitions filed under Section 4651.1 shall be granted~~
11 ~~while the injured workman is pursuing a rehabilitation plan under~~
12 ~~Section 139.5 of this code.~~

13 SEC. 16. Section 4903 of the Labor Code is amended to read:

14 4903. The appeals board may determine, and allow as liens
15 against any sum to be paid as compensation, any amount
16 determined as hereinafter set forth in subdivisions (a) ~~through to~~
17 (i), *inclusive*. If more than one lien is allowed, the appeals board
18 may determine the priorities, if any, between the liens allowed.
19 The liens that may be allowed hereunder are as follows:

20 (a) A reasonable attorney's fee for legal services pertaining to
21 any claim for compensation either before the appeals board or
22 before any of the appellate courts, and the reasonable disbursements
23 in connection therewith. No fee for legal services shall be awarded
24 to any representative who is not an ~~attorney, except with respect~~
25 ~~to those claims for compensation for which an application, pursuant~~
26 ~~to Section 5501, has been filed with the appeals board on or before~~
27 ~~December 31, 1991, or for which a disclosure form, pursuant to~~
28 ~~Section 4906, has been sent to the employer, or insurer or~~
29 ~~third-party administrator, if either is known, on or before December~~
30 ~~31, 1991 attorney.~~

31 (b) The reasonable expense incurred by or on behalf of the
32 injured employee, as provided by Article 2 (commencing with
33 Section 4600) and, to the extent the employee is entitled to
34 reimbursement under Section 4621, medical-legal expenses as
35 provided by Article 2.5 (commencing with Section 4620) of
36 Chapter 2 of Part 2.

37 (c) The reasonable value of the living expenses of an injured
38 employee or of his or her dependents, subsequent to the injury.

39 (d) The reasonable burial expenses of the deceased employee,
40 not to exceed the amount provided for by Section 4701.

(e) The reasonable living expenses of the spouse or minor children of the injured employee, or both, subsequent to the date of the injury, where the employee has deserted or is neglecting his or her family. These expenses shall be allowed in the proportion that the appeals board deems proper, under application of the spouse, guardian of the minor children, or the assignee, pursuant to subdivision (a) of Section 11477 of the Welfare and Institutions Code, of the spouse, a former spouse, or minor children. A collection received as a result of a lien against a workers' compensation award imposed pursuant to this subdivision for payment of child support ordered by a court shall be credited as provided in Section 695.221 of the Code of Civil Procedure.

(f) The amount of unemployment compensation disability benefits that have been paid under or pursuant to the Unemployment Insurance Code in those cases where, pending a determination under this division there was uncertainty whether the benefits were payable under the Unemployment Insurance Code or payable hereunder; provided, however, that any lien under this subdivision shall be allowed and paid as provided in Section 4904.

(g) The amount of unemployment compensation benefits and extended duration benefits paid to the injured employee for the same day or days for which he or she receives, or is entitled to receive, temporary total disability indemnity payments under this division; provided, however, that any lien under this subdivision shall be allowed and paid as provided in Section 4904.

(h) The amount of family temporary disability insurance benefits that have been paid to the injured employee pursuant to the Unemployment Insurance Code for the same day or days for which that employee receives, or is entitled to receive, temporary total disability indemnity payments under this division, provided, however, that any lien under this subdivision shall be allowed and paid as provided in Section 4904.

(i) The amount of indemnification granted by the California Victims of Crime Program pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code.

(j) The amount of compensation, including expenses of medical treatment, ~~and recoverable costs that have been paid by the~~

1 ~~Asbestos Workers' Account pursuant to the provisions of Chapter~~
2 ~~11 (commencing with Section 4401) of Part 1.~~

3 SEC. 17. Section 4903.1 of the Labor Code is amended to read:

4 4903.1. (a) The appeals board, arbitrator, or ~~settlement~~
5 ~~conference referee~~ *workers' compensation judge*, before issuing
6 an award or approval of any compromise of claim, shall determine,
7 on the basis of liens filed with it pursuant to subdivision (b) or (c),
8 whether any benefits have been paid or services provided by a
9 health care provider, a health care service plan, a group disability
10 policy, including a loss of income policy, a self-insured employee
11 welfare benefit plan, or a hospital service contract, and its award
12 or approval shall provide for reimbursement for benefits paid or
13 services provided under these plans as follows:

14 (1) When the ~~referee~~ *workers' compensation judge* issues an
15 award finding that an injury or illness arises out of and in the course
16 of employment, but denies the applicant reimbursement for
17 self-procured medical costs solely because of lack of notice to the
18 applicant's employer of his need for hospital, surgical, or medical
19 care, the appeals board shall nevertheless award a lien against the
20 employee's recovery, to the extent of benefits paid or services
21 provided, for the effects of the industrial injury or illness, by a
22 health care provider, a health care service plan, a group disability
23 policy, a self-insured employee welfare benefit plan, or a hospital
24 service contract.

25 (2) When the ~~referee~~ *workers' compensation judge* issues an
26 award finding that an injury or illness arises out of and in the course
27 of employment, and makes an award for reimbursement for
28 self-procured medical costs, the appeals board shall allow a lien,
29 to the extent of benefits paid or services provided, for the effects
30 of the industrial injury or illness, by a health care provider, a health
31 care service plan, a group disability policy, a self-insured employee
32 welfare benefit plan, or a hospital service contract.

33 (3) When the ~~referee~~ *workers' compensation judge* issues an
34 award finding that an injury or illness arises out of and in the course
35 of employment and makes an award for temporary disability
36 indemnity, the appeals board shall allow a lien as living expense
37 under Section 4903, for benefits paid by a group disability policy
38 providing loss of time benefits. Such lien shall be allowed to the
39 extent that benefits have been paid for the same day or days for
40 which temporary disability indemnity is awarded and shall not

1 exceed the award for temporary disability indemnity. No lien shall
2 be allowed hereunder unless the group disability policy provides
3 for reduction, exclusion, or coordination of loss of time benefits
4 on account of workers' compensation benefits.

5 (4) When the parties propose that the case be disposed of by
6 way of a compromise and release agreement, in the event the lien
7 claimant, other than a health care provider, does not agree to the
8 amount allocated to it, then the ~~referee~~ *workers' compensation*
9 *judge* shall determine the potential recovery and reduce the amount
10 of the lien in the ratio of the applicant's recovery to the potential
11 recovery in full satisfaction of its lien claim.

12 (b) When a compromise of claim or an award is submitted to
13 the appeals board, arbitrator, or ~~settlement conference referee~~
14 *workers' compensation judge* for approval, the parties shall file
15 with the appeals board, arbitrator, or ~~settlement conference referee~~
16 *workers' compensation judge* any liens served on the parties.

17 (c) Any lien claimant under Section 4903 or this section shall
18 file its lien with the appeals board in writing upon a form approved
19 by the appeals board. The lien shall be accompanied by a full
20 statement or itemized voucher supporting the lien and justifying
21 the right to reimbursement and proof of service upon the injured
22 worker, or if deceased, upon the worker's dependents, the
23 employer, the insurer, and the respective attorneys or other agents
24 of record.

25 (d) The appeals board shall file liens required by subdivision
26 (c) immediately upon receipt. Numbers shall be assigned pursuant
27 to subdivision (c) of Section 5500.

28 SEC. 18. Section 4905 of the Labor Code is amended to read:

29 4905. Where it appears in any proceeding pending before the
30 appeals board that a lien should be allowed if it had been duly
31 requested by the party entitled thereto, *except as provided in*
32 *Section 4903.5 and subdivision (a) of Section 4904*, the appeals
33 board may, without any request for ~~such~~ *the* lien having been made,
34 order the payment of the claim to be made directly to the person
35 entitled, in the same manner and with the same effect as though
36 the lien had been regularly requested, and the award to such person
37 shall constitute a lien against unpaid compensation due at the time
38 of service of the award.

39 SEC. 19. Section 4907 of the Labor Code is amended to read:

1 4907. The privilege of any person, including attorneys admitted
2 to practice in the Supreme Court of the state to appear in any
3 proceeding as a representative of any party before the appeals
4 board, or any of its ~~referees~~ *workers' compensation judges*, may,
5 after a hearing, be removed, denied, or suspended by the appeals
6 board for a violation of this chapter or for other good cause.

7 SEC. 20. Section 5270.5 of the Labor Code is amended to read:

8 5270.5. (a) The presiding workers' compensation judge at
9 each district office shall prepare a list of all eligible attorneys who
10 apply to be placed on the list of eligible arbitrators. Attorneys are
11 eligible to become arbitrators if they are active members of the
12 California State Bar Association and are one of the following:

13 (1) A certified specialist in workers' compensation, or eligible
14 to become certified.

15 (2) A retired workers' compensation judge.

16 (3) A retired appeals board member.

17 (4) An attorney who has been certified to serve as a judge pro
18 tempore.

19 (b) No attorney shall be included in a panel of arbitrators, if he
20 or she has served as a judge in any proceeding involving the same
21 case, *unless expressly waived by the parties*, or has represented,
22 or whose firm has represented, any party in the same case.

23 SEC. 21. Section 5271 of the Labor Code is amended to read:

24 5271. (a) The parties to a dispute submitted for arbitration
25 may select any eligible attorney from the list prepared by the
26 presiding workers' compensation judge to serve as arbitrator.
27 However, when the disputed issue involves insurance coverage,
28 the parties may select any attorney as arbitrator upon agreement
29 of the parties.

30 (b) If the parties cannot select an arbitrator by agreement, either
31 party may request the presiding workers' compensation judge to
32 assign a panel of five arbitrators selected at random from the list
33 of eligible attorneys. No more than three arbitrators on a
34 five-member panel may be defense attorneys, no more than three
35 may be applicant's attorneys, and no more than two may be retired
36 workers' compensation judges or appeals board commissioners.

37 (c) For each party in excess of one party in the capacity of
38 employer and one party in the capacity of injured employee or lien
39 claimant, the presiding judge shall randomly select two additional
40 arbitrators to add to the panel. ~~For~~ *When an applicant or lien*

1 *claimant is a party to the relevant claim, for each additional party*
2 *in the capacity of employer, the presiding judge shall assign a*
3 *retired workers' compensation judge or retired appeals board*
4 *commissioner and an applicant's attorney. When the dispute*
5 *involves solely defendants, for each additional party in the capacity*
6 *of employer beyond two employers, the presiding judge shall assign*
7 *a workers' compensation judge or retired appeals board*
8 *commissioner and an applicant's attorney. For each additional*
9 *party in the capacity of injured employee or lien claimant, the*
10 *presiding judge shall assign a retired workers' compensation judge*
11 *or retired appeals board commissioner and a defense attorney. For*
12 *each additional other party, the presiding judge shall assign two*
13 *arbitrators to the panel, in order of rotation from case to case, as*
14 *follows: a retired workers' compensation judge or retired appeals*
15 *board commissioner, an applicant's attorney, a defense attorney.*

16 (d) A party may petition the presiding workers' compensation
17 judge to remove a member from the panel pursuant to Section
18 170.1 of the Code of Civil Procedure. The presiding workers'
19 compensation judge shall assign another eligible attorney to replace
20 any member removed under this subdivision.

21 (e) Each party or lien claimant shall strike two members from
22 the panel, and the remaining attorney shall serve as arbitrator.

23 SEC. 22. Section 5402 of the Labor Code is amended to read:

24 5402. (a) Knowledge of an injury, obtained from any source,
25 on the part of an employer, his or her managing agent,
26 superintendent, foreman, or other person in authority, or knowledge
27 of the assertion of a claim of injury sufficient to afford opportunity
28 to the employer to make an investigation into the facts, is
29 equivalent to service under Section 5400 *and shall constitute notice*
30 *of the injury.*

31 (b) If liability is not rejected within 90 days after the date the
32 claim form is filed under Section 5401, the injury shall be presumed
33 compensable under this division. The presumption of this
34 subdivision is rebuttable only by evidence discovered subsequent
35 to the 90-day period.

36 (c) Within one working day after an employee files a claim form
37 under Section 5401, the employer shall authorize the provision of
38 all treatment, consistent with Section 5307.27 or the American
39 College of Occupational and Environmental Medicine's
40 Occupational Medicine Practice Guidelines, for the alleged injury

1 and shall continue to provide the treatment until the date that
2 liability for the claim is accepted or rejected. Until the date the
3 claim is accepted or rejected, liability for medical treatment shall
4 be limited to ten thousand dollars (\$10,000).

5 (d) Treatment provided under subdivision (c) shall not give rise
6 to a presumption of liability on the part of the employer.

7 SEC. 23. Section 5451 of the Labor Code is amended to read:

8 5451. Any party may consult with, or seek the advice of, an
9 information and assistance officer within the Division of Workers'
10 Compensation as designated by the administrative director. If no
11 application is filed, if the employee is not represented, or upon
12 agreement of the parties, the information and assistance officer
13 shall consider the contentions of the parties and may refer the
14 matter to the appropriate ~~bureau or~~ unit within the Division of
15 Workers' Compensation for review and recommendations. The
16 information and assistance officer shall advise the employer and
17 the employee of their rights, benefits, and obligations under this
18 division. Upon making a referral, the information and assistance
19 officer shall arrange for a copy of any pertinent material submitted
20 to be served upon the parties or their representatives, if any. The
21 procedures to be followed by the information and assistance officer
22 shall be governed by the rules and regulations of the administrative
23 director adopted after public hearings.

24 SEC. 24. Section 5453 of the Labor Code is amended to read:

25 5453. After consideration of the information submitted,
26 including the reports of any ~~bureau or~~ unit within the Division of
27 Workers' Compensation ~~which~~ *that* have been received, the
28 information and assistance officer shall make a recommendation
29 ~~which that~~ shall be served on the parties or their representatives,
30 if any.

31 SEC. 25. Section 5500.5 of the Labor Code is amended to read:

32 5500.5. (a) Except as otherwise provided in Section 5500.6,
33 liability for occupational disease or cumulative injury claims filed
34 or asserted on or after January 1, 1978, shall be limited to those
35 employers who employed the employee during a *one-year* period
36 ~~of four years~~ immediately preceding either the date of injury, as
37 determined pursuant to Section 5412, or the last date on which the
38 employee was employed in an occupation exposing him or her to
39 the hazards of the occupational disease or cumulative injury,
40 whichever occurs first. ~~Commencing January 1, 1979, and~~

thereafter on the first day of January for each of the next two years;
the liability period for occupational disease or cumulative injury
shall be decreased by one year so that liability is limited in the
following manner:

For claims filed or —asserted on or after:	The period shall be:
January 1, 1979.....	—three years
January 1, 1980.....	—two years
January 1, 1981 and thereafter.....	one year

In the event that none of the employers during the above
referenced ~~periods~~ *period* of occupational disease or cumulative
injury are insured for workers' compensation coverage or an
approved alternative thereof, liability shall be imposed upon the
last year of employment exposing the employee to the hazards of
the occupational disease or cumulative injury for which an
employer is insured for workers' compensation coverage or an
approved alternative thereof.

Any employer held liable for workers' compensation benefits
as a result of another employer's failure to secure the payment of
compensation as required by this division shall be entitled to
reimbursement from the employers who were unlawfully uninsured
during the last year of the employee's employment, and shall be
subrogated to the rights granted to the employee against the
unlawfully uninsured employers under the provisions of Article 1
(commencing with Section 3700) of Chapter 4 of Part 1 of Division
4.

If, based upon all the evidence presented, the appeals board or
workers' compensation judge finds the existence of cumulative
injury or occupational disease, liability for the cumulative injury
or occupational disease shall not be apportioned to prior or
subsequent years; ~~however,~~ *However,* in determining the liability,
evidence of disability due to specific injury, disability due to
nonindustrial causes, or disability previously compensated for by
way of a findings and award or order approving compromise and
release, or a voluntary payment of disability, may be admissible
for purposes of apportionment.

(b) Where a claim for compensation benefits is made on account
of an occupational disease or cumulative injury ~~which~~ *that* may

1 have arisen out of more than one employment, the application shall
2 state the names and addresses of all employers liable under
3 subdivision (a), the places of employment, and the approximate
4 periods of employment where the employee was exposed to the
5 hazards of the occupational disease or cumulative injury. If the
6 application is not so prepared or omits necessary and proper
7 employers, any interested party, at or prior to the first hearing,
8 may request the appeals board to join as defendant any necessary
9 or proper party. If the request is made prior to the first hearing on
10 the application, the appeals board shall forthwith join the employer
11 as a party defendant and cause a copy of the application together
12 with a notice of the time and place of hearing to be served upon
13 the omitted employer; provided, the notice can be given within
14 the time specified in this division. If the notice cannot be timely
15 given or if the motion for joinder is made at the time of the first
16 hearing, then the appeals board or the workers' compensation judge
17 before whom the hearing is held, if it is found that the omitted
18 employer named is a necessary or proper party, may order a joinder
19 of the party and continue the hearing so that proper notice may be
20 given to the party or parties so joined. Only one continuance shall
21 be allowed for the purpose of joining additional parties. Subsequent
22 to the first hearing the appeals board shall join as a party defendant
23 any additional employer when it appears that the employer is a
24 proper party, but the liability of the employer shall not be
25 determined until supplemental proceedings are instituted.

26 (c) In any case involving a claim of occupational disease or
27 cumulative injury occurring as a result of more than one
28 employment within the appropriate time period set forth in
29 subdivision (a), the employee making the claim, or his or her
30 dependents, may elect to proceed against any one or more of the
31 employers. Where such an election is made, the employee must
32 successfully prove his or her claim against any one of the
33 employers named, and any award ~~which~~ *that* the appeals board
34 shall issue awarding compensation benefits shall be a joint and
35 several award as against any two or more employers who may be
36 held liable for compensation benefits. If, during the pendency of
37 any claim wherein the employee or his or her dependents has made
38 an election to proceed against one or more employers, it should
39 appear that there is another proper party not yet joined, the
40 additional party shall be joined as a defendant by the appeals board

1 on the motion of any party in interest, but the liability of the
2 employer shall not be determined until supplemental proceedings
3 are instituted. Any employer joined as a defendant subsequent to
4 the first hearing or subsequent to the election provided herein shall
5 not be entitled to participate *either* in any of the proceedings prior
6 to the appeal board's final decision, ~~nor~~ *or* to any continuance or
7 further proceedings, but may be permitted to ascertain from the
8 employee or his or her dependents ~~such~~ *the* information ~~as~~ *that*
9 will enable the employer to determine the time, place, and duration
10 of the alleged employment. On supplemental proceedings, however,
11 the right of the employer to full and complete examination or
12 cross-examination shall not be restricted.

13 (d) (1) In the event a self-insured employer which owns and
14 operates a work location in the State of California, sells or has sold
15 the ownership and operation of the work location pursuant to a
16 sale of a business or all or part of the assets of a business to another
17 self-insured person or entity after January 1, 1974, but before
18 January 1, 1978, and all the requirements of subparagraphs (A) to
19 (D), inclusive, exist, then the liability of the employer-seller and
20 employer-buyer, respectively, for cumulative injuries suffered by
21 employees employed at the work location immediately before the
22 sale shall, until January 1, 1986, be governed by the provisions of
23 this section which were in effect on the date of that sale.

24 (A) The sale constitutes a material change in ownership of ~~such~~
25 *the* work location.

26 (B) The person or entity making the purchase continues the
27 operation of the work location.

28 (C) The person or entity becomes the employer of substantially
29 all of the employees of the employer-seller.

30 (D) The agreement of sale makes no special provision for the
31 allocation of liabilities for workers' compensation between the
32 buyer and the seller.

33 (2) For purposes of this subdivision:

34 (A) "Work location" shall mean any fixed place of business,
35 office, or plant where employees regularly work in the trade or
36 business of the employer.

37 (B) A "material change in ownership" shall mean a change in
38 ownership whereby the employer-seller does not retain, directly
39 or indirectly, through one or more corporate entities, associations,

1 trusts, partnerships, joint ventures, or family members, a controlling
2 interest in the work location.

3 (3) This subdivision shall have no force or effect on or after
4 January 1, 1986, unless otherwise extended by the Legislature
5 prior to that date, and it shall not have any force or effect as
6 respects an employee who, subsequent to the sale described in
7 paragraph (1) and prior to the date of his or her application for
8 compensation benefits has been filed, is transferred to a different
9 work location by the employer-buyer.

10 (4) If any provision of this subdivision or the application thereof
11 to any person or circumstances is held invalid, that invalidity shall
12 not affect other provisions or applications of this subdivision which
13 can be given effect without the invalid provision or application,
14 and to this end the provisions of this subdivision are severable.

15 (e) At any time within one year after the appeals board has made
16 an award for compensation benefits in connection with an
17 occupational disease or cumulative injury, any employer held liable
18 under the award may institute proceedings before the appeals board
19 for the purpose of determining an apportionment of liability or
20 right of contribution. The proceeding shall not diminish, restrict,
21 or alter in any way the recovery previously allowed the employee
22 or his or her dependents, but shall be limited to a determination of
23 the respective contribution rights, interest or liabilities of all the
24 employers joined in the proceeding, either initially or
25 supplementally; ~~provided, however,~~ *However*, if the appeals board
26 finds on supplemental proceedings for the purpose of determining
27 an apportionment of liability or of a right of contribution that an
28 employer previously held liable in fact has no liability, it may
29 dismiss the employer and amend its original award in such manner
30 as may be required.

31 (f) If any proceeding before the appeals board for the purpose
32 of determining an apportionment of liability or of a right of
33 contribution where any employee incurred a disability or death
34 resulting from silicosis in underground metal mining operations,
35 the determination of the respective rights and interests of all of the
36 employers joined in the proceedings either initially or
37 supplementally shall be as follows:

38 (1) All employers whose underground metal mining operations
39 resulted in a silicotic exposure during the period of the employee's
40 employment in those operations shall be jointly and severally liable

1 for the payment of compensation and of medical, surgical, legal
2 and hospital expense ~~which~~ *that* may be awarded to the employee
3 or his or her estate or dependents as the result of disability or death
4 resulting from or aggravated by the exposure.

5 (2) In making its determination in the supplemental proceeding
6 for the purpose of determining an apportionment of liability or of
7 a right of contribution of percentage liabilities of the various
8 employers engaged in underground metal mining operations the
9 appeals board shall consider as a rebuttal presumption that
10 employment in underground work in any mine for a continuous
11 period of more than three calendar months will result in a silicotic
12 exposure for the employee so employed during the period of
13 employment if the underground metal mine was driven or sunk in
14 rock having a composition ~~which~~ *that* will result in dissemination
15 of silica or silicotic dust particles when drilled, blasted, or
16 transported.

17 (g) Any employer shall be entitled to rebut the presumption by
18 showing to the satisfaction of the appeals board, or the workers'
19 compensation judge, that the mining methods used by the employer
20 in the employee's place of employment did not result during his
21 or her employment in the creation of silica dust in sufficient amount
22 or concentration to constitute a silicotic hazard. Dust counts,
23 competently made, at intervals and in locations as meet the
24 requirements of the Division of Occupational Safety and Health
25 for safe working conditions may be received as evidence of the
26 amount and concentration of silica dust in the workings where the
27 counts have been made at the time when they were made. The
28 appeals board may from time to time, as its experience may indicate
29 proper, promulgate orders as to the frequency with which dust
30 counts shall be taken in different types of workings in order to
31 justify their acceptance as evidence of the existence or nonexistence
32 of a silicotic hazard in the property where they have been taken.

33 (h) The amendments to this section adopted at the ~~1959~~ *1959-60*
34 Regular Session of the Legislature shall operate retroactively, and
35 shall apply retrospectively to any cases pending before the appeals
36 board or courts. From and after the date this section becomes
37 effective no payment shall be made out of the fund used for
38 payment of the additional compensation provided for in Section
39 4751, or out of any other state funds, in satisfaction of any liability
40 heretofore incurred or hereafter incurred, except awards ~~which~~

1 *that* have become final without regard to the continuing jurisdiction
2 of the appeals board on that effective date, and the state and its
3 funds shall be without liability therefor. This subdivision shall not
4 in any way effect a reduction in any benefit conferred or ~~which~~
5 *that* may be conferred upon any injured employee or his *or her*
6 dependents.

7 (i) The amendments to this section adopted at the ~~1977~~ 1977-78
8 Regular Session of the Legislature shall apply to any claims for
9 benefits under this division which are filed or asserted on or after
10 January 1, 1978, unless otherwise specified in this section.

11 SEC. 26. Section 5501.5 of the Labor Code is amended to read:

12 5501.5. (a) The application for adjudication of claim shall be
13 filed in any of the following locations:

14 (1) In the county where the injured employee or dependent of
15 a deceased employee resides on the date of filing.

16 (2) In the county where the injury allegedly occurred, or, in
17 cumulative trauma and industrial disease claims, where the last
18 alleged injurious exposure occurred.

19 (3) In the county where the employee's attorney maintains his
20 or her principal place of business, if the employee is represented
21 by an attorney.

22 (b) If the county selected for filing has more than one office of
23 the appeals board, the application shall be filed at any location of
24 the appeals board within that county that meets the criteria specified
25 in subdivision (a). The written consent of the employee, or
26 dependent of a deceased employee, to the selected venue site shall
27 be filed with the application.

28 (c) If the venue site where the application is to be filed is the
29 county where the employee's attorney maintains his or her principal
30 place of business, ~~the attorney for the employee shall indicate that~~
31 ~~venue site when forwarding the information request form required~~
32 ~~by Section 5401.5. The employer shall have 30 days from receipt~~
33 ~~of the information request form~~ *conforming application to object*
34 *file and serve an objection* to the selected venue site. Where there
35 is an employer objection to a venue site under paragraph (3) of
36 subdivision (a), then the application shall be filed pursuant to either
37 paragraph (1) or (2) of subdivision (a). *For purposes of this*
38 *subdivision, a conforming application is one that includes the date*
39 *it was filed with the appeals board and a case number.*

(d) If there is no appeals board office in the county where venue is permitted under subdivision (a), the application shall be filed at the appeals board office nearest the residence on the date of filing of the injured employee or dependent of a deceased employee, or the nearest place where the injury allegedly occurred, or, in cumulative trauma and industrial disease claims, where the last injurious exposure occurred, or nearest the location where the attorney of the employee maintains his or her principal place of business, unless the employer objects under subdivision (c).

SEC. 27. Section 5502 of the Labor Code is amended to read:

5502. (a) Except as provided in subdivisions (b) and (d), the hearing shall be held not less than 10 days, and not more than 60 days, after the date a declaration of readiness to proceed, on a form prescribed by the court administrator, is filed. If a claim form has been filed for an injury occurring on or after January 1, 1990, and before January 1, 1994, an application for adjudication shall accompany the declaration of readiness to proceed.

(b) The court administrator shall establish a priority calendar for issues requiring an expedited hearing and decision. A hearing shall be held and a determination as to the rights of the parties shall be made and filed within 30 days after the declaration of readiness to proceed is filed if the issues in dispute are any of the following:

(1) The employee's entitlement to medical treatment pursuant to Section 4600.

(2) The employee's entitlement to, or the amount of, temporary disability indemnity payments.

(3) The employee's entitlement to vocational rehabilitation services, or the termination of an employer's liability to provide these services to an employee.

(4) The employee's entitlement to compensation from one or more responsible employers when two or more employers dispute liability as among themselves.

(5) Any other issues requiring an expedited hearing and determination as prescribed in rules and regulations of the administrative director *or court administrator*.

(c) The court administrator shall establish a priority conference calendar for cases in which ~~the employee is represented by an attorney and~~ the issues in dispute are employment or injury arising out of employment or in the course of employment. The conference

1 shall be conducted by a workers' compensation administrative law
2 judge within 30 days after the declaration of readiness to proceed.
3 If the dispute cannot be resolved at the conference, a trial shall be
4 set as expeditiously as possible, unless good cause is shown why
5 discovery is not complete, in which case status conferences shall
6 be held at regular intervals. The case shall be set for trial when
7 discovery is complete, or when the workers' compensation
8 administrative law judge determines that the parties have had
9 sufficient time in which to complete reasonable discovery. A
10 determination as to the rights of the parties shall be made and filed
11 within 30 days after the trial.

12 (d) The court administrator shall report quarterly to the Governor
13 and to the Legislature concerning the frequency and types of issues
14 ~~which~~ *that* are not heard and decided within the period prescribed
15 in this section and the reasons therefor.

16 (e) (1) In all cases, a mandatory settlement conference shall be
17 conducted not less than 10 days, and not more than 30 days, after
18 the filing of a declaration of readiness to proceed. If the dispute is
19 not resolved, the regular hearing shall be held within 75 days after
20 the declaration of readiness to proceed is filed.

21 (2) The settlement conference shall be conducted by a workers'
22 ~~compensation administrative law judge or by a referee who is~~
23 ~~eligible to be a workers' compensation administrative law judge~~
24 ~~or judge, a pro tempore workers' compensation judge, or a person~~
25 ~~eligible to be an arbitrator under pursuant to Section 5270.5. At~~
26 ~~the mandatory settlement conference, the referee or workers'~~
27 ~~compensation administrative law judge or other authorized~~
28 ~~officiant shall have the authority to resolve the dispute, including~~
29 ~~the authority to approve a compromise and release or issue a~~
30 ~~stipulated finding and award, and if the dispute cannot be resolved,~~
31 ~~to frame the issues and stipulations for trial. The appeals board~~
32 ~~shall adopt any regulations needed to implement this subdivision.~~
33 ~~The presiding workers' compensation administrative law judge~~
34 ~~shall supervise settlement conference referees workers'~~
35 ~~compensation judges in the performance of their judicial functions~~
36 ~~under this subdivision.~~

37 (3) If the claim is not resolved at the mandatory settlement
38 conference, the parties shall file a pretrial conference statement
39 noting the specific issues in dispute, each party's proposed
40 permanent disability rating, and listing the exhibits, and disclosing

1 witnesses. Discovery shall close on the date of the mandatory
2 settlement conference. Evidence not disclosed or obtained
3 thereafter shall not be admissible unless the proponent of the
4 evidence can demonstrate that it was not available or could not
5 have been discovered by the exercise of due diligence prior to the
6 settlement conference.

7 (f) In cases involving the Director of the Department of
8 Industrial Relations in his or her capacity as administrator of the
9 Uninsured Employers Fund, this section shall not apply unless
10 proof of service, as specified in paragraph (1) of subdivision (d)
11 of Section 3716 has been filed with the appeals board and provided
12 to the Director of Industrial Relations, valid jurisdiction has been
13 established over the employer, and the fund has been joined.

14 (g) Except as provided in subdivision (a) and in Section 4065,
15 the provisions of this section shall apply irrespective of the date
16 of injury.

17 SEC. 28. Section 5505 of the Labor Code is amended to read:

18 5505. If any defendant desires to disclaim any interest in the
19 subject matter of the claim in controversy, or considers that the
20 application is in any respect inaccurate or incomplete, or desires
21 to bring any fact, paper, or document to the attention of the appeals
22 board as a defense to the claim or otherwise, he *or she* may, within
23 10 days after the service of the application upon him *or her*, file
24 with or mail to the appeals board his *or her* answer in such form
25 as the appeals board may prescribe, setting forth the particulars in
26 which the application is inaccurate or incomplete, and the facts
27 upon which he *or she* intends to rely. A copy of the answer shall
28 be forthwith served upon all adverse parties. Evidence upon matters
29 not pleaded by answer shall be allowed only upon the terms and
30 conditions imposed by the appeals board or ~~referee~~ *workers'*
31 *compensation judge* holding the hearing.

32 SEC. 29. Section 5700 of the Labor Code is amended to read:

33 5700. The hearing on the application may be adjourned from
34 time to time and from place to place in the discretion of the appeals
35 board or the workers' compensation judge holding the hearing.
36 Any *trial* hearing adjourned by the workers' compensation judge
37 shall be continued to be heard by and shall be concluded and the
38 decision made by the workers' compensation judge who previously
39 heard it. Either party may be present at any hearing, in person, by

1 attorney, or by any other agent, and may present testimony
2 pertinent under the pleadings.

3 SEC. 30. Section 5708 of the Labor Code is amended to read:

4 5708. All hearings and investigations before the appeals board
5 or a workers' compensation judge are governed by this division
6 and by the rules of practice and procedures adopted by the appeals
7 board. In the conduct thereof they shall not be bound by the
8 common law or statutory rules of evidence and procedure, but may
9 make inquiry in the manner, through oral testimony and records,
10 which is best calculated to ascertain the substantial rights of the
11 parties and carry out justly the spirit and provisions of this division.
12 All oral testimony, objections, and rulings shall be ~~taken down in~~
13 ~~shorthand~~ *recorded on a permanent accessible record* by a
14 competent ~~phonographic~~ *hearing* reporter.

15 SEC. 31. Section 5813 of the Labor Code is amended to read:

16 5813. (a) The workers' compensation ~~referee judge~~ or appeals
17 board may order a party, the party's attorney, or both, to pay any
18 reasonable expenses, including attorney's fees and costs, incurred
19 by another party as a result of bad-faith actions or tactics that are
20 frivolous or solely intended to cause unnecessary delay. In addition,
21 a workers' compensation ~~referee judge~~ or the appeals board, in its
22 sole discretion, may order additional sanctions not to exceed two
23 thousand five hundred dollars (\$2,500) to be transmitted to the
24 General Fund.

25 (b) The determination of sanctions shall be made after written
26 application by the party seeking sanctions or upon the appeal
27 board's own motion.

28 (c) This section shall apply to all applications for adjudication
29 that are filed on or after January 1, 1994.